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State v. Weaver Respondent's Brief Dckt. 43355

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43355
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2013-15181
)	
CYNTHIA ELAINE WEAVER aka BERAUN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Weaver failed to establish that the district court abused its discretion by denying her Rule 35 motion to reduce her unified sentence of seven years, with two years fixed, imposed upon her guilty plea to forgery?

Weaver Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Weaver pled guilty to forgery and the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction for 365 days. (R., pp.80-83.) After a period of retained jurisdiction, the district court relinquished jurisdiction and

ordered Weaver's sentence executed without reduction. (R., pp.87-89.) Weaver subsequently filed a Rule 35 motion for sentence reduction, which the district court denied. (R., pp.86, 91-102.) Weaver filed a notice of appeal timely from the district court's order denying her Rule 35 motion. (R., pp.104-06.)

Weaver asserts the district court abused its discretion when it denied her Rule 35 motion in light of her "accomplishments" while incarcerated in this matter, the support of her family and friends, and her employability. (Appellant's brief, pp.4-5.) The record supports the sentence imposed.

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Weaver must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Weaver has failed to satisfy her burden.

Weaver has not earned a reduction of her sentence. She has an extensive criminal record consisting of four prior adult felonies, two felony juvenile adjudications, as well as numerous misdemeanor convictions. (PSI, pp.4, 42-43, 59-61, 84-85, 113-14.¹) Weaver has also had previous opportunities for probation and has violated her probation on at least two occasions. (PSI, pp.4, 60.) While on her rider in this case, Weaver continued her criminal thinking and behavior and "struggled to take accountability for her actions." (PSI, pp.144-52.) While in the final phase of her programming, PWCC staff placed Weaver on a Behavioral Contract "to address her

¹ Citations to the PSI are to the electronic file "Weaver 43355 psi.pdf."

attitudes and behaviors which included manipulation of learning experiences she was assigned and a generally poor attitude.” (PSI, p.151.) Weaver continued her manipulative behavior, however, and PWCC staff ultimately removed Weaver from the Therapeutic Community program with the recommendation that the district court relinquish jurisdiction. (PSI, pp.144-45, 151-52.)

In support of her Rule 35 motion, Weaver submitted a letter to the district court listing the programming she had completed while in custody in this matter, her attendance at AA meetings and church services, her volunteer work while in custody, and her status as an inmate worker while in the Gem County Jail. (R., pp.91-94.) Weaver also submitted a second letter stating she had employment should she be placed on probation, and enclosing a letter of support from a former employer. (R., pp.95-100.) This is not “new” information that entitles Weaver to a reduction of her sentence. The district court was aware at the time it relinquished jurisdiction that Weaver had had the benefit of programming, both in the jail prior to sentencing and while on her Rider; had previously attended AA meetings; was an inmate worker; and had support in the community. (R., p.78; PSI, p.146; Tr., p.66, L.16 – p.71, L.8.) Weaver has not demonstrated any entitlement to a sentence reduction, particularly in light of her overall poor performance on her rider, her failure to complete the Therapeutic Community program, and her continued inability or unwillingness to utilize any of the skills that she did learn. Weaver has failed to establish an abuse of discretion in the district court’s denial of her Rule 35 motion for a reduction of sentence.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Weaver's Rule 35 motion.

DATED this 24th day of November, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of November, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General